

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

George Kirkland, Jr. ,

Plaintiff,

v.

Marvin Keeling, et al.,

Defendants.

Case No. 12-15275

Honorable Nancy G. Edmunds

**ORDER ACCEPTING AND ADOPTING THE MAGISTRATE JUDGE'S MAY 5, 2014
REPORT AND RECOMMENDATION [66]**

Plaintiff George Kirkland, Jr., a sixty-six year-old man incarcerated at Central Michigan Correctional Facility at the beginning of this suit, has filed a 28 U.S.C. § 1983 action for negligent actions three prison officials allegedly took regarding Plaintiff's various alleged medical concerns. (Dkt. 1, Compl.) Plaintiff seeks to recover for alleged injuries relating to the prison's failure to remove a tube from his left eye, a broken foot, and athlete's foot.

On January 16, 2014, the Court accepted the magistrate judge's recommendation and dismissed Defendants Keeling and Birkett and all the claims against them. (Dkt. 58, Order at 2-3.) After the January 16, 2014 order, the only claim and Defendant remaining in the case was the deliberate indifference claim relating to Plaintiff's broken foot against Defendant Kearney. (*Id.* at 5.)

On May 5, 2014, the magistrate judge issued a report and recommendation on Defendant Kearney's motion for summary judgment on the last remaining claim in the case. (Dkt. 66.) The magistrate judge recommended that the Court grant Defendant Kearney's

motion for summary judgment because Plaintiff could not prove the objective or subjective component of a deliberate indifference Eighth Amendment claim regarding his broken ankle. (*Id.*)

Plaintiff filed an objection to the magistrate judge's report and recommendation, but he does not address the magistrate judge's holding or the deliberate indifference claim against Defendant Kearney. (Dkt. 68, 69.) "[T]he failure to object to the magistrate judge's report[] releases the Court from its duty to independently review the matter." *Hall v. Rawal*, 09-10933, 2012 WL 3639070, at *1 (E.D.Mich. Aug. 24, 2012) (citation omitted). The Court nevertheless agrees with the magistrate judge's recommendation. The Court ACCEPTS and ADOPTS the magistrate judge's report and recommendation and therefore GRANTS Defendant Kearney's motion for summary judgment and dismisses him from this case.

The Court now turns to the substance of his objections/appeals. (Dkt. 68, 69.) These objections/appeals address the magistrate judge's orders denying Plaintiff's motion for appointment of counsel, motion for immediate consideration, and motion to add defendant. (Dkt. 65, 59, 60, 61.) In his objections/appeals, Plaintiff presents the Court with an update on his eye issue and the appointments he has had in 2014. Plaintiff submits that the ophthalmologist told him that the tube stayed in his eye so long that it caused Plaintiff's tear ducts to enlarge. (Dkt. 69, Pl.'s Supplement at 2.) The enlargement caused tears from the right side of the tear duct to pour over into the left side of the tear duct. (*Id.*) The ophthalmologist stated that Plaintiff would need another surgery to correct the enlargement, but that the ophthalmologist did not have the expertise in that procedure. (*Id.*)

The Court agrees with the magistrate judge in her May 5, 2014 order denying Plaintiff's request for appointment of counsel, immediate consideration, and motion to add

defendant. (Dkt. 65.) As the Court has stated throughout this case, and as the Court reaffirms now, Plaintiff has not shown a constitutional violation. While Plaintiff has shown that he is experiencing, and has experienced, discomfort in the form of watery and itchy eyes, the Court finds that those discomforts do not rise to the level of an Eighth Amendment violation.

The Court therefore OVERRULES Plaintiff's objections, ACCEPTS and ADOPTS the magistrate judge's May 5, 2014 report and recommendation, and GRANTS Defendant Kearney's motion for summary judgment. There being no claims pending in this case, the Court will issue a judgment closing this case.

So ordered.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: June 18, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 18, 2014, by electronic and/or ordinary mail.

s/Carol J. Bethel
Case Manager